

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PENDLETON DIVISION

OREGON FIREARMS FEDERATION,)  
INC., )  
 )  
Plaintiffs, )  
 )  
vs. ) Case 2:22-cv-01815-IM  
 ) 2:22-cv-01859-IM  
TINA KOTEK, et al., ) 2:22-cv-01862-IM  
 ) 2:22-cv-01869-IM  
 )  
Defendants. )

DEPOSITION OF 30(b)(6) WENDY LANDERS

THE DEPOSITION OF WENDY LANDERS was taken as a witness on behalf of the Plaintiffs, pursuant to Federal Rules of Civil Procedure, at 12:15 p.m., Friday, the 5th of May 2023, at the offices of the Oregon State Police, 3565 Trelstad Avenue SE, in the City of Salem, County of Marion, State of Oregon, before Traci R. Moore, Professional Court Reporter in and for the State of Oregon.

Page 2

1

2 APPEARANCES

3

4 FOR THE PLAINTIFF EYRE:

5

JURISLAW LLP  
By: Shawn M. Lindsay  
shawn@jurislawyer.com  
Three Centerpointe Drive  
Suite 160  
Lake Oswego, Oregon 97035  
(503) 986-1475

6

7 FOR THE PLAINTIFF OREGON FIREARMS FEDERATION:

8

VAN NESS WILLIAMSON  
By: Leonard W. Williamson  
l.williamson@vwlp.com  
960 Liberty Street SE  
Suite 100  
Salem, Oregon 97302  
(503) 365-8800

9

10 FOR THE DEFENDANTS:

11 MARKOWITZ HERBOLD PC  
By: Harry B. Wilson  
harrywilson@markowitzherbold.com  
1455 Southwest Broadway  
12 Suite 1900  
13 Portland, Oregon 97201-1900

14

15 ALSO PRESENT: Wendy Landers

16

17

18

19

20

21

22

23

24

25

Page 8

1           Q. -- and yourself have signed off on  
2 this?

3           A. Uh-huh.

4           Q. Okay. Is Oregon State Police prepared  
5 to accept applications today?

6           A. We are, we are prepared.

7           Q. Have you received applications?

8           A. We had one application that was  
9 submitted by a citizen. It was not submitted by  
10 a permit agent, and so we returned that  
11 application to that citizen informing them of  
12 what the ballot measure states, that that's to go  
13 through the permit agent.

14           Q. And you say that you're prepared to  
15 receive completed applications.

16           A. Uh-huh.

17           Q. In what ways are you prepared to  
18 receive them?

19           A. Uh-huh. So, we're prepared to receive  
20 applications via U.S. Mail or courier. We  
21 are -- we could also send the application via  
22 fax.

23 As for the fingerprint piece of that, that would  
24 need to come to us via U.S. Mail or courier at  
25 this time.

Page 10

1 whatever the statute says or what the new law  
2 will say, and then they let us know -- "us",  
3 being states, know whether that meets Public  
4 Law 92-544.

5 For Ballot Measure 114 the FBI has  
6 returned back to us that Ballot Measure 114 does  
7 not meet Public Law 92-544.

8 Q. What does that mean, "your unit"?

9 A. Uh-huh. So, we will process -- if  
10 Ballot Measure 114 went into effect tomorrow, we  
11 would process the applications and the  
12 fingerprints, just as we are to as outlined in  
13 Ballot Measure 114.

14 What we would report is what we have  
15 found and we would report that in regards to the  
16 FBI fingerprint background check, that we were  
17 denied that access at this time, so that would be  
18 how we would report that out.

19 Q. I think you said that you had processed  
20 the fingerprints.

21 A. Uh-huh.

22 Q. What does that mean?

23 A. So, we can process the fingerprints in  
24 regards to any Oregon records. So we would bring  
25 those fingerprints in and process those through

Page 11

1 our ABIS Unit, and then we would look at any  
2 Oregon records that were identified through that  
3 positive identification.

4 Q. So you will report to the permit agent  
5 that you processed the background check, you  
6 processed the fingerprints through the Oregon  
7 system?

8 A. (Nodding head.)

9 Q. And report back to the dealer -- I'm  
10 sorry. Not the dealer, to the permit agent --

11 A. Uh-huh.

12 Q. -- approved or -- well, what are the  
13 possible responses?

14 A. So, as stated here, there would be,  
15 qualified, disqualified, or we would note if we  
16 found -- if we found a record, we would also note  
17 what that was.

18 We will also report that we -- we have  
19 completed everything; however, we are unable to  
20 complete the FBI response for the fingerprints at  
21 this time.

22 Q. In my mind, that leaves it to the  
23 permit agency to waive that FBI background check  
24 or not?

25 A. It would, it would lie to the permit

Page 12

1 agent to make that determination.

2 Q. And if there are differing responses by  
3 differing permit agencies, what does that mean to  
4 the Oregon State Police?

5 A. Our responsibility in this is to run  
6 the background and -- and comply with what Ballot  
7 Measure 114 says.

8 The ultimate issue of issuing of the  
9 permit lies within the permit agent as Ballot  
10 Measure 114 is written. We would look to  
11 whatever determination that permit agent has  
12 made, as to whether they will issue or not issue  
13 the permit.

14 Q. Personally, I think that Measure 114  
15 could be read to say that the Oregon State Police  
16 as part of the background check must consider the  
17 fingerprint analysis by the FBI, and that would  
18 be part of the background check.

19 Who made that decision at the Oregon  
20 State Police to respond as you indicate you  
21 intend to respond?

22 A. Uh-huh. We have worked with our  
23 general counsel, and with advise from our general  
24 counsel we were able to determine what -- what  
25 our response would be.

Page 13

1           In Ballot Measure 114, it says that we  
2 are to report the outcome, and the outcome is  
3 that the FBI has not approved for us to run the  
4 fingerprints that the level.

5           Q. And when you say, we made that  
6 determination, who is "we"?

7           A. We would be at -- with conversations  
8 between myself, Commander Davie, and up to the  
9 superintendent level.

10          Q. Governor level?

11          A. To my knowledge, no.

12          Q. What do you do with the fingerprint  
13 cards for the permit application once you've  
14 run -- "processed" them, I guess is the word you  
15 used?

16          A. Uh-huh. As in what happens to the card  
17 afterwards?

18          Q. Yes.

19          A. Is that the question?

20          Q. Yes.

21          A. We would retain the fingerprint card.

22          It -- and hold that record, so long as the person  
23 had a permit.

24          Q. And so I understand that these  
25 applications would come to you from the permit a

Page 14

1 agent through mail?

2 A. Uh-huh.

3 Q. Fax?

4 A. Uh-huh.

5 Q. Or hand delivery?

6 A. Uh-huh.

7 Q. Tell me how you would process this.

8 I'm assuming that you manually maybe scan it,  
9 maybe suck the data off somehow?

10 A. Right.

11 Q. Tell me what that process looks like.

12 A. Yeah. So at this time we don't have a  
13 system that we would use. We have been very open  
14 about that. It would be a manual process. We  
15 would have staff reviewing the information and  
16 then manually searching the same systems that we  
17 would search for FICS background, as well as the  
18 return they would get on that positive  
19 identification for any record that exists.

20 Our plan at this time, and we're ready  
21 to do it tomorrow if we are told to, would be to  
22 have spreadsheets for tracking this information  
23 and, frankly, keeping paper copies until we are  
24 able to stand up a system.

25 Q. So it sounds like that this might be

Page 15

1 given to a FICS Unit employee, that unit employee  
2 would enter that manually into the FICS  
3 background check application?

4 A. We -- we would not use that  
5 application. We would need to stand up our own  
6 system. We  
7 would -- but we would be using -- we would be  
8 hitting the same databases that we hit for FICS.

9 So, we can access databases outside of  
10 the FICS system as needed. So, we access it  
11 through what's called LEDS. And so all of our  
12 folks are LEDS certified, and they would get into  
13 the LEDS system and query those databases.

14 Q. When you say "stand up your own  
15 system," what does that mean?

16 A. So we would need to work with vendors,  
17 probably go out for RFP and select a vendor to  
18 build a permit to purchase software for us to  
19 use.

20 Q. Okay. That sounds like that would take  
21 some time?

22 A. It would take some time.

23 Q. Okay. I think you just said, though,  
24 that you are ready and prepared to process  
25 applications --

Page 16

1 A. Uh-huh.

2 Q. -- now?

3 A. Yes.

4 Q. How would you do that before this  
5 standing up of your own system?

6 A. It would be a manual process. It  
7 would -- I envision an employee would have an  
8 application and fingerprint, and they would be  
9 sitting at their assigned area and accessing into  
10 the LEDS database and entering the information  
11 that they have in front of them.

12 And then reviewing those returns, much  
13 like our FICS system does our FICS system returns  
14 from databases, and it's all there for the FICS  
15 employee to review. And then they would be able  
16 to make a determination or realize if they need  
17 additional information in order to reach that  
18 determination.

19 Q. How long would that process take?

20 A. It -- it depends, but I don't know that  
21 I have an exact time, but I -- I have asked this  
22 question of staff, and it sounds that it would  
23 take anywhere from five to ten minutes to process  
24 through those systems on a manual entry.

25 Q. Meanwhile, background checks are going

Page 17

1 on?

2 A. Uh-huh.

3 Q. Regular background checks. So, this is  
4 an additional major assignment given to the  
5 FICS Unit?

6 A. Correct.

7 Q. How would you prioritize to purchase  
8 applications compared to background check  
9 requests?

10 A. So, if Ballot Measure 114 were to come  
11 to fruition tomorrow, we would immediately work  
12 on recruitment. We've already drafted a position  
13 description. We're ready to open recruitments  
14 and immediately start hiring staff so that we can  
15 fit the need.

16 Q. Is this in addition to the 30 employees  
17 that you currently have --

18 A. Yes.

19 Q. -- allocated, and the 17?

20 A. Yes, that would be in addition.

21 Q. So, have you received budget for this  
22 additional staff or --

23 A. No, we have not.

24 Q. How many staff would you intend to  
25 recruit?

Page 18

1           A. So, it's a hard question to answer. I  
2 appreciate the question, but it is a hard  
3 question to answer, because we don't -- we don't  
4 initially know how many people are going to apply  
5 for a permit to purchase.

6           Initial thoughts -- I don't know if I  
7 have anything in my notebook here, but I know  
8 that -- give me just a minute to glance over this  
9 to see if I have anything in here.

10           I know we had some initial thoughts  
11 when first it was a petition and then when it  
12 became a ballot measure. I'm not seeing those  
13 documents in my binder, and I don't necessarily  
14 want to guess, but I know that we have definitely  
15 thrown a significant amount of staff at that.

16           If -- if memory serves, I would say  
17 probably about 20 staff that we have identified  
18 that we would need to get for the permit to  
19 purchase program.

20           Q. So, if Measure 114 went into effect  
21 tomorrow --

22           A. Uh-huh.

23           Q. -- it's fair to say that you could put  
24 out job opportunity recruitments for 20-plus  
25 employees?

Page 19

1 A. Absolutely, yes.

2 Q. And you have the budgeting for that?

3 A. We have not been given the budget, but  
4 we would need to uphold the law. And the law  
5 would say that's something we're responsible for,  
6 so we would start the recruitment process.

7 Q. Do you have surplus to cover those  
8 labor costs?

9 A. I don't know that I could answer that  
10 question. That would be a question that I need  
11 to speak with my budget folks.

12 Q. Who is that that would be able to  
13 answer that question?

14 A. I would probably lean towards Jenny  
15 Cribbs (phonetic). She's our CFO.

16 Q. Of the Oregon State Police?

17 A. Uh-huh.

18 Q. You don't know whether you have surplus  
19 dollars to cover those labor costs?

20 A. We do have -- we do have moneys, but I  
21 wouldn't be able to speak to what that looks like  
22 exactly.

23 Q. That would take a little while to  
24 recruit and train some staff, correct?

25 A. That is a correct statement.

Page 20

1       Q. Initially, if 114 went into effect, you  
2 would be using your current FICS Unit staff until  
3 those employees were hired and trained?

4       A. Yes, that is a correct statement.

5       Q. And you would split responsibilities  
6 between permit to purchase applications and  
7 background checks?

8       A. Yes.

9       Q. So, there's the manual entry of the  
10 application. Tell me about the database that you  
11 would maintain and how this information would get  
12 there and how it's maintained?

13      A. Uh-huh. So, at this time we would have  
14 an Excel spreadsheet that we would use. We would  
15 have staff entering the information into that  
16 Excel spreadsheet for us to use. Like I said, we  
17 would immediately want to work with vendors and  
18 figure out how we could get a system stood up.

19      Q. Where would that Excel spreadsheet file  
20 reside?

21      A. We would -- we would work with our IT  
22 to find the most appropriate place to park a  
23 spreadsheet like that. We have different drives  
24 that we can use right now.

25           We have it parked in what we call our

Page 22

1 time entering data.

2 Q. So, it could be that 20 different  
3 employees have their own Excel file on their  
4 individual computer system?

5 A. Uh-huh.

6 Q. And what I'm hearing is that somebody  
7 would gather those files and consolidate them  
8 somehow?

9 A. Yes.

10 Q. It sounds like a lot of manual  
11 inputting?

12 A. Yeah, it would be.

13 Q. On those individual employee computer  
14 work stations or on the master Z drive, what  
15 administrative safeguards would there be?

16 A. Again, we would work with our IT to  
17 find the best way to protect the data and make  
18 sure that we are maintaining the data.

19 Q. That hasn't been done today?

20 A. That has not been done today, but I  
21 don't think that's a heavy lift for us to do.

22 Q. The Excel spreadsheet doesn't exist  
23 today?

24 A. We have the Excel spreadsheet, but  
25 there's no data.

Page 23

1 Q. That Excel spreadsheet file exists in  
2 one location at this point?

3 A. Yes.

4 Q. Do you know if there's any  
5 administrative safeguards in place for that  
6 spreadsheet?

7 A. At this time, no.

8 Q. How about any FFL safeguards?

9 A. What do you mean by "FFL"?

10 Q. FFL would be, like, say, from  
11 (unintelligible) or DOJ?

12 A. Oh, so our hard drives aren't on  
13 location, so -- and there are backups done where  
14 our data is stored, so I would say that FFL  
15 safeguards are in place.

16 Q. The last one would be what's called  
17 security safeguards.

18 A. Uh-huh.

19 Q. That would be, like, an encryption for  
20 limitation of who has access.

21 A. Yeah.

22 Q. Explain that.

23 A. There's limitations to accessing our  
24 systems anyways. You have to -- you have to be a  
25 user. There's VPNAs to -- a VPN to get into our

Page 24

1 systems. It's not -- not anybody can just log  
2 into our systems is what I'm trying to say.

3 Q. What about employees taking a file on a  
4 thumb drive and walking out with the thumb  
5 drive, is that possible?

6 MR. WILSON: Objection. Scope.

7 THE WITNESS: I think that's  
8 possible with any -- with any workplace. We have  
9 regular trainings in regards to safeguarding our  
10 data, and in that training it specifically talks  
11 about how the biggest risk to data is the  
12 employees themselves purposefully or  
13 accidentally.

14 And so could an employee do something  
15 like that, unfortunately, they probably could.  
16 Do I think that our employees would do that, no,  
17 I don't.

18 BY MR. LINDSAY:

19 Q. I think you said that the Excel  
20 spreadsheet file exists already today, but it's  
21 just empty?

22 A. Uh-huh.

23 Q. What is the information that it's  
24 prepared to receive?

25 A. Sure. That's a great question, and I

Page 33

1 submission of fingerprints.

2 Q. And do permit agents have access to  
3 Live Scan fingerprint machines?

4 A. Some do, some do not.

5 Q. How many do and how many do not?

6 A. I don't know that I have those exact  
7 numbers with me today. And I would be reaching  
8 to guess, but I do know that there are -- there  
9 are permit agents specifically, from what I  
10 understand, on the police department side that  
11 don't have Live Scans.

12 Q. And are you set up today and prepared  
13 to receive Live Scan from permit agents?

14 A. Today we cannot; however, we have  
15 worked with our vendor and we would be able to  
16 receive electronic submissions of fingerprints  
17 within 30 days.

18 COURT REPORTER: Live Scans.

19 THE WITNESS: L-i-v-e.

20 BY MR. LINDSAY:

21 Q. What vendor would that be?

22 A. We work with Diverse Computing.  
23 They're the vendor that we have for most of our  
24 programs in CJIS Division.

25 Q. If Measure 114 went into effect right

Page 36

1           Q. Does section E require that the State  
2 Police run a background check with the  
3 fingerprint card?

4           MR. WILSON: Same objection.

5           THE WITNESS: Yeah, I would say  
6 that I'm not an attorney and cannot speak to the  
7 interpretation of that.

8 BY MR. WILLIAMSON:

9           Q. If your general counsel were to read  
10 this in a way that's the only reason to take  
11 fingerprints, is for the FBI to run them, what  
12 kind of background check would the State Police  
13 then be doing at this level?

14          A. Through --

15          Q. Would you be running the same  
16 background check that the FICS would if  
17 fingerprints weren't involved?

18          A. If fingerprints weren't involved, but  
19 everything else stayed?

20          Q. Uh-huh.

21          A. Yes, it would be our same background as  
22 what our FICS currently does.

23          Q. Okay. And presently I think the way  
24 the statute is constructed, your understanding  
25 from the replies from the FBI, is it simply

Page 38

1 sheriffs, the response reads, "OSP can receive  
2 fingerprints on cards through U.S. Mail."

3 OSP is also preparing a grant  
4 application that could allow local law  
5 enforcement agencies to obtain equipment. Are  
6 you familiar with any grant application to do  
7 such?

8 A. Yeah, so we're currently in the process  
9 of completing an application to ask for grant  
10 money for Live Scan purchases. I believe that  
11 we've heard from -- I don't think that --

12 Again, it's in my binder. I'm not  
13 trying to be evasive, but I think we're around 15  
14 agencies that have shown interest, and some of  
15 them wanting one and some wanting two machines.  
16 We are preparing that grant application.

17 Q. And assuming the application is  
18 granted, and maybe you've already answered this,  
19 but if those come online in the counties, then  
20 you would be able to receive the fingerprints  
21 electronically?

22 A. Yes.

23 Q. And that would speed up the process?

24 A. It would in that they would be able to  
25 electronically send that, fax the application,

Page 42

1

## CERTIFICATE

2 I, Traci R. Moore, a Professional Court  
3 Reporter and Notary Public, hereby certify that  
4 said witness, WENDY LANDERS, personally appeared  
5 before me at the time and place set forth in the  
6 caption hereof; that at said time and place I  
7 reported in stenotype all testimony adduced and  
8 other oral proceedings had in the foregoing  
9 matter; that thereafter my notes were transcribed  
10 through computer-aided transcription, under my  
11 direction; and that the foregoing pages  
12 constitute a full, true and accurate record of  
13 all such testimony adduced and oral proceedings  
14 had, and of the whole thereof.

15 I further certify that review of the  
16 transcript was not requested.

17 Witness my hand at Portland, Oregon,  
18 this 12th day of May, 2023.

19

20

21

22

23

24

---

Traci R. Moore

25

Professional Court Reporter

26